

## **REMARKS**

In accordance with the forgoing, claims 1, 4, 14, 17, 20, 30, 34 and 50 have been amended. Claims 1 – 10, 13 – 14, 16 – 26, 29 – 30, 32, 34 – 36, 38 – 43, 46, 49 – 50, 52 – 57, 59 – 63 are pending and under consideration.

### **I. Double Patenting**

Claims 1-10, 13-14, 16-26, 29-30, 32-43, 46-47 and 49-57 stand provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-58 of copending Application No. 10/727,008. Since the rejection is provisional, Applicants will address the provisional rejection once claims have been allowed.

### **II. Rejections Under 35 USC § 112**

Claims 1-10, 13, 14, 16-26, 29, 30, 32, 34-43, 46, 49, 50, 52-57, and 59-63 stand rejected under 35 USC § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which the application regards as the invention.

Claims 1, 4, 14, 17, 20, 30, 34 and 50 have been amended to more clearly set forth the measured physiologic parameters being one of pressure, heart rate variability and activity level. Accordingly, withdrawal of the rejection is respectfully requested.

### **III. Rejections Under 35 USC § 102**

Claims 1-10, 13-14, 16-26, 29-30, 32, 34-43, 46, 49, 50, 52-57 and 59-63 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Hautala, et al., U.S. Patent Publication No. 2001/0027266 ("Hautala").

As described, for example, at paragraph [0070] to [0071] of the present application, a short term average STA(i) measurement is updated by taking a weighted sum of the short term average for the two previous days,  $A * STA(i-1)$  and  $B * STA(i-2)$ , respectively, and the physiologic parameter measurement

calculated for the current day,  $C * \text{physiologic parameter (i)}$ , and the two previous days,  $D * \text{physiologic parameter (i-1)}$  and  $E * \text{physiologic parameter (i-2)}$ , respectively. The values of the weighting portions A-D is dependent upon whether the physiologic parameter is pressure, heart rate variability or activity level.

For example, if the physiologic parameter is generated from pressure measurements, weighted variable A is equal to 1.1095, weighted variable B is equal to 0.4130, weighted variable C is equal to 0.1389, weighted variable D is equal to 0.0256 and weighted variable E is equal to 0.1389. If the physiologic parameter is generated from heart rate variability measurements, weighted variable A is equal to 1.1095, weighted variable B is equal to 0.4130, weighted variable C is equal to 0.1389, weighted variable D is equal to 0.0256 and weighted variable E is equal to 0.1389. If the physiologic parameter is generated from activity measurements, weighted variable A is equal to 0.3008, weighted variable B is equal to 0.1953, weighted variable C is equal to 0.2344, weighted variable D is equal to 0.4258 and weighted variable E is equal to 0.2344.

Therefore, independent claims 1, 4, 14, 17, 20, 30, 34 and 50 set forth generating measured physiologic parameters, the measured physiologic parameters being one of pressure, heart rate variability and activity level, and updating one of an adaptive baseline trend and a short term trend, the one of the adaptive baseline trend and the short term trend being updated by a first variable in response to the one of pressure, heart rate variability and activity level being pressure, updated by a second variable not equal to the first variable in response to the one of pressure, heart rate variability and activity level being heart rate variability, and updated by a third variable not equal to the first variable and the second variable in response to the one of pressure, heart rate variability and activity level being activity level.

Hautala teaches calculating a heart rate variation, defined as temporal variations in heart beats around the expected moment when the heart should beat, using either a standard deviation or a distribution function. The Examiner

asserts that Hautala's teaching of temporal variations in heart rates being calculated as a moving standard deviation to be representative of the adaptive baseline trend.

Assuming merely for the sake of discussion that this assertion is correct, nevertheless Hautala does not teach generating measured physiologic parameters, the measured physiologic parameters being one of pressure, heart rate variability and activity level, and updating one of an adaptive baseline trend and a short term trend, the one of the adaptive baseline trend and the short term trend being updated by a first variable in response to the one of pressure, heart rate variability and activity level being pressure, updated by a second variable not equal to the first variable in response to the one of pressure, heart rate variability and activity level being heart rate variability, and updated by a third variable not equal to the first variable and the second variable in response to the one of pressure, heart rate variability and activity level being activity level, as set forth in independent claims 1, 4, 14, 17, 20, 30, 34 and 50 of the present application.

Claims 2, 3, 5-10, 13, 16, 18, 19, 21-26, 29, 32, 33, 35, 36, 38 - 43, 46, 49, 52 - 57, and 59-63 depend directly or indirectly from independent claims 1, 4, 14, 17, 20, 30, 34 and 50 discussed above, and are submitted as being patentable for the reasons that independent claims 1, 4, 14, 17, 20, 30, 34 and 50 are believed to be patentable, as well as for the reason that these claims further distinguish over the referenced prior art documents. Therefore, for at least the reasons set forth above, the claims are patentably distinguishable from Hautala. Accordingly, withdrawal of the rejection is respectfully requested.

#### **IV. Rejections Under 35 USC § 103**

Claims 1-10, 13-14, 16-26, 29-30, 32-43, 46-47 and 49-57 have been rejected under 35 U.S.C. § 102(e) as being anticipated by Stadler, et al., U.S. Patent Publication No. 2004/0172080 ("Stadler").

The present application and Stadler were, at the time the invention of present application was made, both owned by Medtronic, Inc. Therefore,

Applicants respectfully assert that the Stadler reference is disqualified under 35 USC § 103(c) as prior art in a rejection under 35 USC § 103(a). Accordingly, withdrawal of the rejection is respectfully requested.

## **V. Conclusion**

Applicant asserts that the remarks presented herein are fully responsive to the Office Action and are sufficient to overcome the rejections presented in the Office Action. However, there may be other arguments to be made as to why the pending claims are patentable. Applicant does not concede any such arguments by having not presented them herein. Applicant respectfully asserts that the present claims are in condition for allowance. Withdrawal of the instant rejections and issuance of a Notice of Allowance is respectfully requested.

Should any issues remain outstanding, the Examiner is urged to telephone the undersigned to expedite prosecution. The Commissioner is authorized to charge any deficiencies and credit any overpayments to Deposit Account No. 13-2546.

Respectfully submitted,

January 13, 2009  
Date

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